



Washington State
Department of Health
Podiatric Medical Board
Meeting Minutes
January 26, 2006

The meeting of the Washington State Podiatric Medical Board was called to order by David Bernstein, DPM, Chair, at 9:30 a.m. The meeting was held at the Hilton Seattle Airport and Conference Center, 17620 International Blvd., SeaTac, Washington 98188.

Board Members

Participating:

David Bernstein, DPM, Chair
James Porter, DPM
Rex Nilson, DPM
Amy Wong, Public Member
Stewart Brim, DPM, Vice Chair (by telephone)

Staff Participating:

Blake Maresh, Executive Director
Arlene Robertson, Program Manager
Dori Jaffe, Assistant Attorney General
Maryella Jansen, Deputy Executive Director
Lisa Noonan, Disciplinary Program Manager
Peter Harris, Staff Attorney
Karen Maasjo, Administrative Staff

OPEN SESSION

1. Call to Order

1.1 Approval of Agenda

The agenda was approved as published.

1.2 Approval of Minutes - September 29, 2005

The September 29, 2005 minutes were approved as submitted.

- 1.3 Approval of Conference Call Minutes - January 12, 2006
The conference call minutes for January 12, 2006 were reviewed and approved.
2. (Open Session) Settlement Presentations
There were no settlements completed for presentation.
3. Open Public Meeting Statute - Dori Jaffe, Assistant Attorney General
Ms. Jaffe provided an overview of the Open Public Meeting Statute. She emphasized the importance of board members being aware when they are asked about issues pertaining to the Board those need to be referred to staff. Issues can then be placed on an agenda and discussed by the full board in open proceedings. Ms. Jaffe explained that even when three or more members are present at an event, board members have to be careful about discussing any business that pertains to the Board. Ms. Jaffe indicated more specific information can be found on the Governor's website.
4. Scope of Practice/Practice Issues.
 - 4.1 Orthotic Definitions
Review current definitions to determine whether to file a CR101 for modification of the rule.
 - 4.1.1 Podiatric Medicine - WAC 246-922-010
Definitions
ISSUE
The current definitions for orthotic devices in WAC 246-922-010 are unclear or incomplete in several aspects. The rules do not address the techniques for modeling or measuring the foot for prescribing custom fabricated orthotics or identify what should be included in a prescription for a custom foot orthotic. There is concern about unlicensed individuals representing products as custom devices without a diagnosis or prescription from a licensed health care practitioner whose scope of practice permits treatment of the foot.

Physical harm can result if an inappropriate device is dispensed. The public is often misled by unlicensed individuals who dispense orthotics or special devices (products) as a result of a self-diagnosis or diagnosis made by the salesperson. Often they receive an ineffective or inefficacious product. Later the customer will go to a health care practitioner because of a poor result. Because the products can be costly, they question why the product was represented by the seller to help their symptoms.

ACTION

The Board noted that similar issues have come up in recent complaints. Without clarification of the rule, the Board will continue to have difficulty identifying whether the standard for these devices has been violated. Review of national standards indicates that it may be appropriate to update the terminology. It does appear that both licensees and the public could benefit from clarification of some of the definitions.

The Board determined some of the national podiatric organizations will be contacted to get their positions on this issue. Information will be brought back to the next meeting to determine whether to pursue a rules change.

- 4.2 Use of Laser/Light/Radio Frequency or Other Energy Devices - Proposed rules by the Medical Quality Assurance Commission (MQAC)
Review for overlap of scope of practice.

ISSUE

The Board has been monitoring this issue for several years and is interested in MQAC findings on these types of devices. Although use of lasers by podiatric physicians is limited to the foot, periodically the Board receives inquiries about the use of laser devices.

ACTION

The Board will continue to monitor the progress of the rule.

- 5. Review Policy/Procedural Revisions Impacted by the Court of Appeals Decision - No. 54291-5-I.
 - 5.1 P095-08 Board Role-Complaints
 - 5.2 P095-31 Closure of Investigative Cases
 - 5.3 P097-43 Closure of Below Threshold Reports
 - 5.4 P003-47 Review of Applicants with Felony or Gross Misdemeanor Convictions

ISSUE

The Board reviewed the policy/procedures revisions which reflect the changes in the complaint approval process.

ACTION

The policies/procedures were approved with the changes as required by the court order.

- 6. Adopting Sexual Misconduct Rules
Laurie Jenkins, Assistant Secretary, will address the issues expressed in Secretary Selecky's letter.

Ms. Jenkins attended the meeting to provide an update on the status of Department activities. She indicated Governor Gregoire and Secretary Selecky are committed to improving patient safety. As part of this initiative, the Department is reviewing the entire disciplinary process to assure that all complaints are given sufficient attention.

Ms. Jenkins also personally expressed Ms. Selecky's interest in improving the consistency of handling sexual misconduct allegations and disciplinary actions regardless of the profession. She encouraged the Board to consider moving forward with rules to address sexual misconduct.

The Board also had an opportunity to ask Ms. Jenkins questions.

6.1 November 17, 2005 letter from Mary C. Selecky, Secretary

6.1.1 Sexual Misconduct Policy - Adopted 5/10/1996

6.1.2. Medical Quality Assurance Commission rules adopted on November 18, 2005

6.1.3 WAC 246-808-590 Sexual Misconduct - Chiropractic

6.1.4 WAC 246-840-740 Sexual misconduct prohibited - Nursing Commission

6.1.5 WAC 246-851-550 Sexual Misconduct - Optometrist

6.1.6 WAC 246-924-358 Sexual Misconduct - Psychologist

ISSUE

The Board adopted sexual misconduct policies in 1996 consistent with other professions. If a behavior involves a sexual boundary issue but does not constitute "sexual contact" under RCW 18.130.180 (24) there can be difficulty taking action against a practitioner's license. Often the behavior has to be charged under RCW 18.130.180 (1) as "moral turpitude" or the case is closed without taking any action.

The Uniform Disciplinary Act does not explicitly describe the types of behavior that are considered to be abuse or sexual contact in RCW 18.130.180 (24). The policy provides a guideline for identifying certain inappropriate behaviors but does not have the force of law. Rules would clarify the definitions and also have the force of law.

Due to the increasing number of cases involving sexual contact and/or other boundary issue behaviors, the

Department is moving forward on rules for all of the professions under the Secretary's authority. Boards and Commissions that have not adopted sexual misconduct rules are being requested by the Department to consider doing so for the professions under their authority.

The Board reviewed the various rules that have been adopted by other professions.

ACTION

Following discussion and review of the rules, the Board approved moving forward with the rules process. Since podiatrists are considered physicians, it was noted that their profession should have the same rules as the allopathic physicians.

7. Examinations

7.1 National Board of Podiatric Medical Examiners - Final decisions made relative to the July 2002 Part I Examination Security Breach

ISSUE

Information from the National Board of Podiatric Medical Examiners (NBPME) regarding the administration and security breach of the July 2002 Part I examination was provided. NBPME invalidated exams from students of several schools who had prior access to the exam. However that action was challenged in court in Florida, Ohio, and New York. The courts found some issues with the way the examination had been invalidated and that candidates were not given an opportunity to appeal NBPME's decision. The court cases have resulted in several significant changes to the examination process. The most significant and costly change will be that future examinations will have all new items for each examination.

ACTION

No action was required by the Board.

8. Program Manager Reports

8.1 Budget Report - November 2005

The November 2005 budget report was provided for review. The Board's expenditures are running a little higher in each category than anticipated.

8.2 Washington Physicians Health Program

8.2.1 December 2005 Statistical Information

8.2.2 2005 DPM Semiannual Report

The status reports were reviewed. It was noted that Dr. Mick Oreskovich, who is replacing Dr. Hankes as Medical Director, has been invited to the next meeting.

9. Executive Director Reports

9.1 Department/Division Updates

Mr. Maresh reported on the progress of the new Integrated Licensing and Regulatory System (ILRS) computer system. A contract has been awarded to CAVU Corporation and work has commenced on customizing their off-the-shelf system to meet DOH business needs.

Mr. Maresh indicated that a Board/Commission/Committee survey would be sent out in a few weeks and response would be appreciated. A copy of the current Operating Agreement was provided for review. Discussion will be scheduled at the next meeting about renewing the agreement.

Ms. Jansen reported on the Legislative session. Although staff monitored many bills there were not many that made it into law. Health care had a significant amount of interest but most of the reform ideas were tabled. It is anticipated the session in 2007 will see more bills addressing health care regulation.

9.2 Raising the Bar for Health Care - Governor Gregoire

This item was shared because it reflects Governor Gregoire's position and how she anticipates making changes in Washington state to improve the health care system.

10. Delegation of Signature Authority for Investigative Service Unit

ISSUE

With the addition of two new managers in ISU delegation is being requested for signature authority for them to sign investigative subpoenas.

ACTION

The Board signed off on the delegation of subpoena signature authority for all managers in ISU.

11. Election of Officers

The current officers, Dr. Bernstein, Chair, and Dr. Brim, Vice-Chair were elected to serve for the upcoming year.

CLOSED SESSION

12. Investigative Authorizations
Two complaints were reviewed.

13. Disciplinary Case Reviews - Reviewing Board Member Reports

<u>CASE NUMBER</u>	<u>CASE DISPOSITION</u>
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2005-02-0002PO	Refer to Legal for a Notice of Correction
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2005-02-0003PO	Care rendered was within the standard of care
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14. Statement of Allegations/Stipulation to Informal Disposition Presentations
Docket No. 05-11-A-1008PO (2003-12-0001PO) - Presentation by Peter Harris, Staff Attorney

Mr. Harris presented the settlement proposed to resolve the Statement of Allegations. The Board deliberated in Executive Session. The respondent will be advised of the Board's decision by mail.

15. Compliance Reports
None at this time.

16. Application Review
None at this time.

The meeting adjourned at 1:50 p.m.

Respectfully Submitted

Arlene Robertson
Program Manager

NOTE: PLEASE VISIT THE PODIATRIC MEDICAL BOARD'S WEB SITE FOR FUTURE AGENDAS AND MINUTES. WWW.DOH.WA.GOV , GO TO LICENSING AND CERTIFICATION AND YOU WILL FIND A LIST OF THE HEALTH PROFESSIONS, GO TO PODIATRIC PHYSICIANS FOR AGENDAS AND MINUTES.
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